IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NOS. 3, 10,19, 21 AND 22 OF 2007

CRIMINAL REVISION APPLICATION NO. 3 OF 2007

Mauvin Godinho,
r/o S-1, Bldg. No.20,
Kamat Kinara,
Caranzalem, Goa. ... Applicant

versus

State ... Respondent

Mr. S. G. Bhobe, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CRIMINAL REVISION APPLICATION NO. 10 OF 2007

Shri Katreddi Venkata Sahaye
Krishnakumar,
51 years old,
r/o Ground Floor, Peace Heaven,
A. Building, near Corporation Bank,
Alto-Porvorim,
Bardez, Goa. ... Applicant

versus

1. State

2. Shri Mauvin Godinho,
   s/o Manuel Godinho,
   56 years of age,
   r/o Flat No.S-1,
   Kamat Kinara,
   Miramar, Panaji-Goa.

3. Shri T. Nagarajan,
   s/o H. Thanu Iyer,
   64 years of age,
   Government retired servant,
   r/o C-1/1, Silver Gate,
   Aquem, Margao, Goa.

4. Vithal Bhandary,
   s/o Shriniwas Shinkre,
   71 years of age,
   r/o Shivbagh, Kadri,
   Mangalore, 577 002
   Karnataka.

5. Shri Radhakrishna
   s/o Rallapalli Karnam
   Nagueshwar Rao,
   51 years of age,
   r/o Bungalow No.1,
   Kalpataru,
   Co-op. Housing Society,
   Rawanfond, Navelim,
   Margao, Gooa.

6. M/s. Marmagoa Steel Ltd.,
   situated at Curtorim,
   Salcete, Goa.

7. M/s. Glass Fibre Division,
   (a division fo Binani Zinc Ltd.)
   presently known as
   M/s. Goa Glass Fibre Ltd.
   A Company incorporated
   under Companies Act, with
   registered Office at
   Binai Building, 38 Strand Road,
   Calcutta, Factory at Colvale,
   Bardez-Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Marvin D'Souza, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CRIMINAL REVISION APPLICATION NO. 19 OF 2007

Shri T. Nagarajan
S/o H. Thanu Iyer
64 years of age,
Retired Government Servant,
Residing at C-1/1,
Silver Gate, Aquem,
Margao, Goa. ... Applicant

versus

State ... Respondent

Mr. M. S. Joshi, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CRIMINAL REVISION APPLICATION NO. 21 OF 2007

1. M/s. Marmagoa Steel Ltd.,
   a company incorporated and
   constituted under the Companies
   Act, 1956 having office at
   Curtorim, Salcete, Goa, and
   through its Company Secretary,
   Shri U. V. Kini, major, married,
   Indian National, resident of
   Kunde Complex,
   3rd floor, Borda, Margao, Goa.

2. Vittal Srinivas Bhandary,
   son of late Srinivas Bhandary,
   70 years old, Indian National,
   retired, resident of Shivbag Kadri,
   Mangalore, 575002, Karnataka.

3. R. K. Radhakrishna,
   son of R. K. Nageshwara Rao,
   51 years old, married,
   Indian National,
   service, resident of Bungalow

No.1., Kalpataru Co-op. Hsg.
Society, Rawanfond, Navelim,
Goa. ... Applicants.

versus

State(Dy. S.P. CID/CB, Panaji,
Goa). ... Respondent

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the State.

CRIMINAL REVISION APPLICATION NO. 22 OF 2007

M/s. Glass Fibre Division,
(a division of Binani Zinc
Ltd.) presently known as
M/s Goa Glass Fibre Ltd.
A Company incorporated
under Companies Act,
with registered Office at
Binai Building, 38 Strand
Road, Calcutta, Factory at
Colvale, Bardez-Goa. ... Applicant

versus

1. State

2. Shri Mauvin Godinho,
s/o Manuel Godinho,
56 years of age,
r/o Flat No.S-1,
Kamat Kinara,
Miramar, Panaji-Goa.

3. Shri T. Nagarajan,
s/o H. Thanu Iyer,
64 years of age,

Government retired servant,
r/o C-1/1, Silver Gate,
Aquem, Margao, Goa.

4. Vithal Bhandary,
s/o Shriniwas Shinkre,
71 years of age,
r/o Shivbagh, Kadri,
Mangalore, 577 002,
Karnataka.

5. Shri Radhakrishna
s/o Rallapalli Karnam
Nagueshwar Rao,
51 years of age,
r/o Bungalow No.1,
Kalpataru, Co-op.
Housing Society,
Rawanfond, Navelim,
Mawrgao, Goa.

6. Shri Katreddi Venkata
Sahaye Krishnakumar,
51 years old, r/o Ground Floor,
Peace Heaven, A. Building,
near Corporation Bank,
Alto-Porvorim,
Bardez-Goa.

7. M/s. Marmagoa Steel Ltd.,
situated at Curtorim,
Salcete, Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. Ryan Menezes, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 26TH OCTOBER, 2007.

JUDGMENT

These revision petitions arise from the common Order dated 8-12-2006 of the learned Special Judge/Sessions Judge, Panaji, by which charge has been ordered to be framed against the accused for offences punishable under Sections 120 B, 409, 420, 465, 468, 471, I.P.C. and Section 13(2) r/w Sections 13(1)(d)(i) and 13(1)(d)(ii) of the Prevention of Corruption Act, 1988.

2. The case against the accused came to be investigated upon a complaint filed by Shri Manohar Parrikar, MLA, Panaji, and it appears that it took different turns depending upon which Government was in power in the State of Goa.

3. The case of the prosecution is that A-1/Godinho and A-2/Nagarajan were the Minister for Power and Chief Electrical Engineer, respectively at the relevant time. The allegation is that A-2/Nagarajan was promoted to act as a Chief Electrical Engineer from 5-2-1996 as he was close to A-1/Godinho, the Minister for Power and in preference to Shri Ghali who was senior to him. At the relevant time they were public servants. A-3/Bhandari and A-4/Radhakrishnan were the Managing Director and the Executive Director of A-6/M/s Marmugao Steel Ltd. and A-5/Shri Krishna Kumar was the General Manager of A-7/M/s Binani Zinc Ltd.(Glass Fibre Division) and that they all entered into a criminal conspiracy to cause wrongful gain to the said two companies, namely, A-6/M/s Marmugao Steel Ltd. and A-7/Binani Zinc Ltd.(Glass Fibre Division) and corresponding loss to

the Government of Goa by illegal means and in pursuance of the said conspiracy A-1/Godinho and A-2/Nagarajan abused their official position as public servants and showed undue favours to the said two companies/industrial units and by illegal means enabled them to avail 25% rebate on power supply and thereby caused wrongful loss of Rs.4,52,77,856/- to the Government of Goa and corresponding wrongful gain to the said companies.

4. There was a Notification dated 30-9-1991 issued by the Government of Goa, with the Cabinet approval. With a view to secure rapid and orderly establishment of industries in Goa, the said Notification dated 30-9-1991 provided that all industrial units who applied for availing High Tension or Low Tension power supply on or after 1-10-1991 for bona fide industrial activities and certified by the Industries Department, Government of Goa, would be eligible for concessional tariffs and would be entitled to a rebate of 25% in the tariffs chargeable under Government Notification dated 27-6-1998 for a period of 5 years from the date on which the supply of electricity was made available to such units.

5. The Respondent No.6/M/s. Marmugao Steel Ltd. had applied for power on 1-11-1989 i.e. before 1-10-1991 and was given power on 2-12-1991. Respondent No.7/M/s. Binani Zinc Ltd. applied for power connection on 18-7-1994 and was given power on 16-3-1996.

6. A-1/Godinho became the Minister for Power on 22-12-1994 and

during his tenure as a Minister for Power the said Notification dated 30-9-1991 came to be rescinded by the Government, again by a Cabinet decision, by Notification dated 31-3-1995 w.e.f. 1-4-1995. It appears that no reason was ever assigned as to why the earlier Notification dated 30-9-1991 was rescinded by Notification dated 31-3-1995.

7. Admittedly, none of the industrial units were given benefit of the said 25% rebate as per Notification dated 30-9-1991 till its rescission w.e.f. 1-4-1995 and, the matter was raised in the Legislative Assembly by Shri Parrikar the Complainant on 29-6-1995 asking the Government as to what steps it wanted to take regarding the release of rebate, and, A-1/Godinho as Minister for Power replied, inter alia, stating that concessional tariff will be given to the consumers who applied for industrial High Tension and Low Tension power supply on or after 1-10-1991 to the date of withdrawal 1-4-1995. He also stated that Government was considering giving of rebate only on energy charges and the procedure would be laid down and notified.

8. A-2/Shri Nagarajan was was appointed as Chief Electrical Engineer by Order dated 5-2-1996 and took charge on 7-2-1996 by prematurely terminating the extension granted to Mr. Madihalli, in preference to Shri Ghali who was his senior.

9. Thereafter Notification dated 15-5-1996 came to be issued presumably in the name of procedure. This Notification admittedly did not

have the approval of the Cabinet and was approved upto the level of A-1/Godinho, as Minister for Power. Reference was made in this Notification dated 15-5-1996 to the earlier Notification dated 30-9-1991 and by virtue of this Notification dated 15-5-1996 the earlier Notification was amended and the words “High Tension or Low Tension power supply” were substituted by “High Tension/Extra High Tension or Low Tension power supply”. The allegation is that this Notification was issued particularly to help A-6/Marmugao Steel Ltd. and A-7/M/s Binani Zinc Ltd.(Glass Fibre Division) who admittedly were the only two companies/industrial units who had applied for Extra High Tension power and their case was earlier rejected by the Chief Electrical Engineer in October, 1995 itself and no legal action was taken by either of the said A-6/Marmugao Steel Ltd. and A-7/M/s Binani Zinc Ltd.(Glass Fibre Division) against the said decision. Even if it is contended that extra high power supply consumers would have come within High Tension consumers as per earlier Notification dated 30-9-1991 lot of explanation will be required to be given as to why this Notification was at all issued if not to help the said two companies/industrial units and which did help A-6/Marmugao Steel Ltd. to get the rebate. Their claim was rejected in October, 1995 because of Notification dated 6-12-1993 did not provide for Extra High Tension consumers.

10. Thereafter, the Notification dated 1-8-1996 came to be issued and this again at the level of A-1/Godinho as Minister for Power and by virtue of this Notification the facility of giving 25% rebate to the industrial units were restored in three categories, namely, Low Tension, High Tension and Extra

High Tension consumers with further stipulation that 25% rebate would be available from 1-8-1996 to all those industrial units who had either “applied or availed power supply” on or after 1-10-1991. It is in connection with the issuance of these two Notifications that the controversy leading to the filing of the complaint by Shri Parrikar started.

11. On or about 21-3-1998 the Complainant Shri Parrikar wrote a letter to the Chief Secretary, Government of Goa, raising the issue of irregularities, illegalities and corruption in the matter of rebate of power subsidy in respect of power guzzlers through manipulation of notifications. The immediate reaction to this letter dated 21-3-1998 appears to be the Order/Circular dated 31-3-1998 issued by A-2/Nagarajan stating that the Government has suspended the release of 25% rebate to the industrial consumers. It stipulated that the rebate on this account would not be given in the bills issued henceforth, and, this suspension included those rebates being given on current monthly consumption charges and also the arrears of rebate being given on 60 monthly instalments in the current bills. One would certainly wonder, if everything was well with the Notifications dated 15-5-1996 and 1-8-1996 where was the tearing hurry to suspend the 25% rebate by virtue of the said circular?

12. It appears that the Cabinet had called for the opinions of the then Advocate General as well as the Finance Secretary and that was after a question was tabled by the said Complainant, and, in his note dated 25-3-1998 it appears that the Development Commissioner, inter alia, noted

that the Gazette Notification granting subsidy was issued on 30-9-1991 and rescinded on 31-3-1995 and subsequently by another Gazette Notification dated 1-8-1996, a new category of consumers was included. He opined that amending of a rescinded Notification was illegal and was made with a malafide intention of including a new specific consumer(that could be only Respondent No.6).(Emphasis supplied). He also noted that the Notification had led to manipulation of records in so far as people had tried to become beneficiaries of the scheme within the notified periods of 1-10-1991 and 31-3-1995.(See Judgment dated 19th onwards of April, 2001 reported in (2001) 2 GLT 358). The Joint Law Secretary in his opinion dated 3-4-1998 opined that before the Notification dated 1-8-1996 was issued, concurrence of the Finance Department ought to have been obtained and further opined that the Notification dated 1-8-1996 was not in conformity with legal sanctity. The Development Commissioner on 4-4-1998 had noted that the Notification dated 1-8-1996 was non est as there was no cabinet clearance and therefore it was necessary to review the entire matter and take it to the cabinet for decision either for ratification or otherwise. The Chief Secretary appears to have been on tour at the relevant time. The controversy was taken to the Hon'ble Chief Minister on 27-8-1998. At his instance, opinion of the Finance Secretary was sought and ultimately the Government decided to withdraw the benefit of rebate by Notification dated 24-7-1998. Here again, it may be observed that if everything was well with the said two Notifications dated 15-5-1996 and 1-8-1996 and if they did not enlarge the scope of the earlier Notification dated 30-9-1991 which was rescinded by Notification dated 31-3-1995 where was the need for the Government again to withdraw the

benefit of rebate by Notification dated 24-7-1998?

13. Shri Parrikar filed his Police complaint on 11-5-1998 after he had sent a reminder to the Chief Secretary on 9-5-1998. The Respondent No.6/M/s Marmugao Steel Ltd. filed a Writ Petition on 30-6-1998, being Writ Petition No.244/1998. So did other industrial units. On 29-7-1998 A-1/Godinho ceased to be Minister for Power with the fall of the Government of Shri Pratap Singh Rane. On 12-8-1998 the Complainant Shri Parrikar filed a Writ Petition bearing No.316/1998, inter alia, challenging the said two Notifications dated 15-5-1996 and 1-8-1996. In between it appears that at one stage the Complainant Shri Parrikar wanted his Writ Petition No.316/1998 to be heard along with the Writ Petition of A-6/M/s Marmugao Steel Ltd. bearing No.244/1998 but withdrew his request. Presumably, when political climate was about to change, and, I must say it is now common knowledge that it is the only constant change which takes place in this State, Shri Parrikar filed an application dated 8-12-1999 seeking leave to withdraw his Writ Petition but the request was turned down by a Division Bench of this Court by Order dated 27-1-2000. It may be noted here that that was the time when Shri Francisco Sardinha was the Chief Minister of the State between 24-11-1999 to 23-10-2000 and it is stated by the learned Counsel for the accused that the Complainant was supporting at that time the said Government headed by Shri Sardinha. The learned Division Bench dismissing the application dated 8-12-1999 observed that the controversy in Writ Petition Nos.316/1998 and 244/1998 and others was not the same. Here, it may be noted that the Writ Petition filed by A-6/Marmugao Steel Ltd.

bearing No.244/1998 and other Writ Petitions filed by 11 other industrial units came to be decided on 21-1-1999(Judgment reported in(1999) 1 GLT 218)(during the tenure of Shri Luizinho Faleiro as Chief Minister).

14. The Complainant Shri Manohar Parrikar became the Chief Minister of the State on 24-10-2000 and continued to be so until 2-2-2005(dates from legislator's diary). The Writ Petition filed by him came to be decided on 19-4-2001 onwards by another Division Bench of this Court(reported in (2001) 2 GLT 358).

15. There is no dispute that the Judgment of this Court in Writ Petition No.244/1998((1999) 1 GLT 218) has become final by virtue of the Order of the Hon'ble Supreme Court dated 13-2-2001, while it is stated on behalf of the accused that the Judgment of this Court in the Complainant Shri Manohar's Writ Petition((2001) 2 GLT 358) is under appeal before the Hon'ble Supreme Court.

16. On or about 2-2-1999(during the Chief Ministership of Shri Luizinho Faleiro who was the Chief Minister from 26-11-1998 to 8-2-1999) the Complainant's complaint dated 11-5-1998 was closed as 'C' summary and apparently without any notice to him. The Cabinet headed by Shri Parrikar on or about 10-3-2000 decided to re-investigate the case. On 3-4-2001 in view of Government communication dated 16-2-2001 permission was sought to re-investigate the same. First, the request was rejected on 4-4-2001 and later granted on 19-4-2001. The Judgment in Writ Petition No.

316/1998 filed by the Complainant((2001) 2 GLT 358) was delivered on 19-4-2001 onwards. The charge-sheet was filed against the accused, and, as already stated that learned Sessions Judge by lengthy and elaborate order has directed framing of charges against the accused for the offences mentioned herein above.

17. Although, the learned Sessions Judge has observed in para 44 of the impugned Order dated 8-12-2006 that A-6/Marmugao Steel Ltd. was given rebate only pursuant to Notification dated 1-8-1996 and in para 46 that the question which will have to be finally determined is whether A-6/Marmugao Steel Ltd. was entitled for rebate after the rescission of the Principal Notification w.e.f. 1-4-1995, in my view, apart from the said incorrect observations, the impugned Order, as a whole on facts of the case, cannot be faulted. The question which will have to be finally decided by the learned Special Judge is not whether A-6/Marmugao Steel Ltd. was entitled for rebate under the first Notification dated 30-9-1991 or under Notification dated 1-8-1996 but whether the Notifications dated 15-5-1996 and 1-8-1996 were issued/got issued by A-1/Godinho with dishonest or oblique motives to help other industrial units, namely, those which were not entitled to rebate under the first Notification and particularly A-6/Marmugao Steel Ltd. and A-7/Binani Zinc Ltd.(Glass Fibre Division) who were the only two Extra High Tension consumers and in connivance with them and which caused loss to the Government. The answer, prima facie, has got to be in the affirmative.

18. The said two Notifications, namely, 15-5-1996 and 1-8-1996

were not a subject matter of challenge in the first Writ Petition bearing No.244/1998((1999) 1 GLT 218). In fact all the industrial units including A-6/Marmugao Steel Ltd. and except A-7/Binani Zinc Ltd.(Glass Fibre Division) got the benefit of rebate because of the said two Notifications, namely, 15-5-1996 and 1-8-1996. That there has been wrongful loss to the Government and wrongful gain to them and others in crores is established. Though the learned Division Bench observed that A-6/Marmugao Steel Ltd., Petitioner in Writ Petition No.244/1998 was entitled to the benefit of rebate under Notification dated 30-9-1991 and the remaining 10 Petitioners under Notification dated 1-8-1996, in fact even if A-6/Marmugao Steel Ltd. got the benefit of Notification dated 30-9-1991 it was because of Notification dated 15-5-1996(See para 13 of Judgment(1999(1) GLT 218) and not because of Notification dated 30-9-1991 alone.

19. The learned Sessions Judge after considering the entire material on record has ordered the framing of charge against the accused. In this context, I may refer to **Smt. Om Wati and another** v. **State**(2001 Cri. L. J. 1723) wherein the Apex Court has reminded the High Courts of their statutory obligation not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law.

20. Although, there was no challenge to the said two Notifications dated 15-5-1996 and 1-8-1996 in the Writ Petitions filed by A-6/Marmugao Steel Ltd. and others and they succeeded in the said petitions, the learned Division Bench which decided the said petitions did express surprise at Notification dated 15-5-1996 which was intended to amend the rescinded Notification dated 30-9-1991. The learned Division Bench also noted that no reasons or justification was placed before them by the Respondents for revival of Notification dated 30-9-1991. In other words, the Division Bench accepted the position that the Notification dated 30-9-1991 was revived by Notification dated 15-5-1996.

21. The learned Division Bench whilst deciding the Complainant's Writ Petition((2001) 2 GLT 358) stated that the Notification dated 1-8-1996 reflected the State Government's intention to reintroduce the benefit of 25% rebate in the power tariff reflected therein and observed that if it was the desire of the State Government by way of a policy decision to reintroduce this benefit which was withdrawn w.e.f. 1-4-1995, it was a pre-requisite that the decision had to be taken by the State Government and could not remain a decision in the form of an instruction/order of one particular department, namely, the Power Department. The Division Bench again stated that the Notification dated 1-8-1996 reintroduced the benefit of 25% rebate and it was clear that the scope and benefit of Notification dated 30-9-1991 was expanded by Notification dated 1-8-1996 as compared to the original Notification dated 30-9-1991 which came to be withdrawn on 31-3-1995. The learned Division Bench also noted that the Advocate General had placed on

record a Confidential Communication dated 20-9-1998 addressed to the Chief Secretary of the State of Goa by the Inspector General of Police(during the Chief Ministership of Dr. Wilfred D'Souza) in which it was stated that the change brought about by Notification dated 1-8-1996 resulted in additional financial liability and the Power Secretary had estimated the total liability in the year 1994 at about 3.5 crores, which could have gone upto 8 to 10 crores till the time consumers at that point of time availed the benefit for a period of 5 years as stipulated in the Notification dated 1-9-1991. Consequent to the issue of 1-8-1996 Notification, about 14 crores were paid in approximately 1 1/2 year period between September, 1996 to March, 1998 when the payment of power subsidy was suspended. The Chief Electrical Engineer in his affidavit dated 12-4-2001 had reiterated that the rough estimate of the total liability of the State was to be 40 to 50 crores on the basis of the impugned Notification dated 1-8-1996 as compared to the earlier Notification dated 30-9-1991. Ultimately, the learned Division Bench set aside the Notification dated 15-5-1996 and 1-8-1996 as they could not be termed to be Government decisions on account of non compliance of the Rules of Business of the Government of Goa, 1991 framed under Article 166(3) of the Constitution of India and as such the said Notifications/decisions were non est, void, ab initio and consequently actions based on the said Notifications were null and void. The learned Division Bench left it to the Government of Goa to proceed to recover the rebate benefits granted on the basis of the Notifications dated 15-5-1996 and 1-8-1996.

22. There is no doubt that this decision of the learned Division

Bench dated 19-4-2001 onwards(reported in (2001) 2 GLT 358) is in appeal before the Apex Court but till the same is set aside, it has got to be followed. In deciding the Complainant's Writ Petition and referring to earlier Writ Petitions including that of A-6/Marmugao Steel Ltd. the learned Division Bench noted that all facts were not placed before the learned Division Bench who decided A-6/Marmugao Steel Ltd. Writ Petition on 21-1-1999 wherein the Division Bench had upheld the power of the State Government to withdraw the subsidy by invoking the provisions of Section 21 of the General Clauses Act by Notification dated 24-7-1998 and the only justification which was given in support of the decision for continuing the rebate power tariff was financial crunch as faced by the State Government. Needless to say, the files which were placed before the learned Division Bench who decided the Complainant's Writ Petition((2001) 2 GLT 358) were not placed before the Division Bench who decided the Writ Petition of A-6/Marmugao Steel Ltd. and others on 21-1-1999((1991) 1 GLT 218). Again, it is needless to observe that it is the change of Governments which brought about different results in the said two sets of Writ Petitions.

23. There is no doubt that A-6/Marmugao Steel Ltd. had always been claiming the benefits of 25% rebate under the first Notification dated 30-9-1991 inspite of their own Chartered Accountant M/s S. S. Kamat advising them that they were not entitled to the same and the learned Division Bench has granted them the benefit of the said Notification and as already stated, it is because of Notification dated 15-5-1996. The said two Notifications have now been held to be illegal. The benefit of the said

Notification dated 30-9-1991 was 25% rebate on all charges(tariffs) and not only on energy charges. One certainly would wonder as to why A-6/Marmugao Steel Ltd. in their report ending for the year 31-3-1995 calculated the rebate only on energy charges and not full charges when their case was otherwise and according to the prosecution this speaks of perfect meeting of minds. At least it shows prior concert with A-1/Godinho or A-2/Nagarajan. It may be that A-3/Bhandari, A-4/Radhakrishnan and A-6/M/s Marmugao Steel Ltd. will have an explanation to offer, or may be not, but for the present that raises enough suspicion of their involvement in the conspiracy. The facts disclosed from the files as discussed by the learned Sessions Judge as well as reflected in the Judgment of the learned Division Bench in the decision reported in ((2001) 2 GLT 358) clearly show that A-1/Godinho bent backwards in giving benefits to A-6/Marmugao Steel Ltd. and A-7/M/s Binani Zinc Ltd.(Glass Fibre Division) and others who were otherwise not entitled to the said rebate under the first Notification and became so entitled by virtue of subsequent two Notifications issued at his instance alone, and this could not be without their connivance of its Officers.

24. Based on the Judgment of the Complainant's Writ Petition No.316/1998((2001) 2 GLT 358) the Writ Petition bearing No.254/1999 filed on 5-8-1999 by A-7/M/s Binani Zinc Ltd.(Glass Fibre Division) and A-5/Shri Krishna Kumar came to be dismissed by the same Division Bench on 25-4-2001 observing that their industrial unit was connected for the first time on 16-3-1996 on which date the benefit of the rebate did not exist. Admittedly by then, benefits of the rebates were extended to A-7/M/s Binani

Zinc Ltd.(Glass Fibre Division) and the learned Division Bench observed that the Government was free to take appropriate steps to recover the same.

25. The learned Public Prosecutor has placed on record, upon instructions, the opinion given by the learned Special Public Prosecutor dated 1-12-1998 which prima facie indicates abuse of power and/or dishonest intention to cause wrongful loss to the Government and wrongful gains to the industrial units. He has opined that A-1/Godinho was inclined somehow to expand the scope of Notification dated 30-9-1991 with intention to cause pecuniary advantage to various industries who were outside the purview of the said Notification and were not entitled to rebate. As per him the following acts disclose the said intention. As per the learned Public Prosecutor, A-1/Godinho was not a novice regarding the transaction of business of the affairs of the State.

(a) For deciding the modalities/guidelines for implementing the Notification dated 30-9-1991 a note dated 2-11-1995 was made by the Minister (notesheet 27/N) mentioning that "connections which could not be provided by 31-3-1995 also be considered". Then again on 14-11-1995 the file was called by the Minister and in the office copy of letter/draft dated 6-11-1995, the Minister has made changes and instead of SSI units introduced all industrial units for grant of rebate of 25% and instead of "for availing", introduced "applied or availed of". This clearly indicates that the Minister for Power had decided to grant rebate of 25% to such industries which were not within the purview of Notification dated 30-9-1991. The various notings/corrections made by the Minister points that somebody was moving the mind of the Minister for bringing in those industries which were outside the purview of

Notification dated 30-9-1991.

(b) The Minister for Power knowing very well that by letter dated 7-2-1996, Mr. Madihalli, the then Chief Electrical Engineer had refused 25% rebate to A-6/Marmugao Steel Ltd., again on or about 11th/12th February directed A-2/Shri Nagarajan, Chief Electrical Engineer to reconsider the entire issue and prepare a draft Notification and accordingly the draft Notification was prepared and was approved by legal(sic.) Law Department and thereafter changes were made by the Minister in the said draft and Notification dated 1-8-1996 was issued. The notings in respect thereof clearly show that the Minister separated(excluded?) the Industries Department from the entire scheme of rebate of 25% by introducing word "Electricity" instead of "Industries Department" and was keen to bring in purview all industrial units who applied or availed of Extra High Tension, High Tension or Low Tension. The said changes made by the Minister were not simple but involving legal as well as financial implications and liability of the Government. Apart from this the legal(sic) "Law" Department had given opinion in the file to the effect that the benefit of the said Notification could not be given retrospectively. On this background, it was required of the Minister to get vetted the changes made by him in the draft Notification from the Legal Department as well as Finance Department. This Act of cancelling the words from the draft Notification and introducing different words by the Minister speaks volume of his mind.

(c) The Power Minister ignored the letter dated 7-2-1996 rejecting 25% rebate of A-6/Marmugao Steel Ltd. sent by Mr. Madihalli, the then Chief Electrical Engineer.

(d) The Power Minister withdrew the power of Industries Department in respect of certification when Industries Department would have been in a better position to verify about the bonafide industrial activities of the industry. By this act, the Minister for Power intended to keep the

issue of 25% of rebate within the Electricity Department itself.

(e) The Minister for Power did not ask the Power Secretary to get vetted the changes made by him in draft Notification dated 31-7-1996 from the Legal (Law) as well as the Finance Department before issuance of Notification as he knew and was aware that by the changes he had made in the draft Notification he had expanded the scope of Notification dated 30-9-1991 and financial burden in connection with 25% rebate was to increase on the Government.

(f) The Minister for Power ignored the Rules of Business while getting the said Notification issued and failed to perform his duty diligently as the duty cast on him to follow the Rules of Business scrupulously so that no financial loss would be caused to the Government. In the said issue of rebate of 25% the Government is put to loss due to expanding the scope of Notification dated 30-10-1991(sic.) 30-9-1991.

(g) The Minister for Power did not seem to have placed the matter of rebate along with the Notification before the Hon'ble Chief Minister and/or for concurrence of cabinet which he was required to do under the Rules of Business and thereby gave a go-bye to the Rules of Business. It would not lie in the mouth of the Minister to say that he was not aware of the Rules as he was not a novice.

26. To that it may be added that the endorsement that he had discussed the matter with the Chief Minister, when in fact he had not, as per Chief Minister's statement is a further indication that A-1/Godinho had the oblique motives in issuing the said Notifications as he did not want the matter to be referred to the Secretary for Power. That the Special Public Prosecutor changed the aforesaid opinion later by his letter dated 19-1-1999 is another matter. The Secretary for Power was always there to aid and advise the

Minister whose advice the said Minister apparently did not take at any time, and again for reasons which are obvious.

27. The Notifications dated 15-5-1996 and 1-8-1996 which did not have concurrence of the Cabinet and for issuance of which A-1/Godinho was alone responsible have now been held to be illegal and void. The acts discussed herein above prima facie show the motive for issuing the same, as a result of which wrongful loss has been caused to the Government and wrongful gain for the said industries particularly A-6/Marmugao Steel Ltd. and A-7/M/s Binani Zinc Ltd.(Glass Fibre Ltd.). Yet another fact which is alleged by the prosecution is the sudden termination of Shri Madihalli who was on extension. It may be that the Cabinet took the decision to terminate his extension prematurely, but explanation will have to be given why A-2/Nagarajan was chosen in preference to Mr. Ghali who was senior to A-2/Nagarajan, to falsify prosecution's allegation that A-2/Nagarajan was close to the Minister.

28. At the stage of framing of charge what is required is the general consideration of the material placed before the Court by the Investigating Officer and not its meticulous examination. In other words, the Court is required to see whether there is ground for presuming that the offence has been committed and not a ground for convicting the accused which is required to be considered only at the conclusion of the trial. At the stage of framing charge even strong suspicion founded on materials which leads the Court to form a presumptive opinion as to the existence of the factual

ingredients constituting the offence alleged may justify the framing of charges against the accused in respect of the commission of that offence.

29. However, the learned Sessions Judge does not appear to have considered as to how the offences under the Indian Penal Code for which also the accused were sought to be charged were attracted to the facts of the case. If A-3/Bhandari and A-6/Marmugao Steel Ltd. had issued a prospectus on or about 11-1-1992 by representing that A-6/Marmugao Steel Ltd. would be entitled to 25% concession on power tariff and thereby deceived the members of the public who purchased the shares on the basis of the false representation one fails to understand as to how that offence of cheating, if at all, could be connected to this case. The offences in this case took place only after A-1/Godinho made a statement in the Legislative Assembly on 5-7-1995. In my view the facts stated do not disclose an offence of cheating. There was no entrustment of any property with any of the accused and therefore there could be no offence of criminal breach of trust. Likewise only because A-1/Godinho made changes in the letter/draft letter dated 6-11-1995 from “SSI units”, to “all industrial units” and replaced the words “for availing” by “applied or availed of” or “discussed with the Chief Minister” when he had not at the most show his oblique motive but would be insufficient to charge him under Sections 465, 468 or 471 of I.P.C. for which all the accused would be entitled to be discharged.

30. The contention that the learned Sessions Judge did not consider that the complaint was filed by a political opponent cannot be

accepted. It was not required to be considered at prima facie stage. Political supporters are not known to file such complaints. That would be a matter to be considered at the time of appreciation of evidence. There is no merit in the contention that the charge-sheet was required to be scrutinized in detail. That is not required to be done at the prima facie stage even if the complaint was filed by a political opponent. The Judgment in Complainant's Writ Petition might have not given criminality to the actions of A-1/Godinho, but other acts, enumerated herein above, prima facie do. Likewise, there is no merit in the submission that A-5/Shri Krishna Kumar is sought to be prosecuted for vicarious liability. A-5/Shri Krishna Kumar as the General Manager of A-7/M/s Binani Zinc Ltd.(Glass Fibre Ltd.) could always conspire or abet the commission of offences under Section 13(1)(d)(i) and (iii) of the Prevention of Corruption Act, 1988 r/w 120 B I.P.C.

31. In my considered view there is sufficient prima facie material to frame a charge against all accused under Section 13(1)(d)(i) and (iii) of the Prevention of Corruption Act, 1988 r/w Section 120 B I.P.C.

32. Revision Petitions are therefore hereby partly allowed. Charge shall be framed as indicated herein above and accused tried in accordance with law. The accused to appear before the trial Court on 30-11-2007 at 10 a.m.

N. A. BRITTO, J.

RD